

SERVICE DATE - MAY 14, 1997

SURFACE TRANSPORTATION BOARD¹

DECISION

No. 41295

PENNSYLVANIA POWER & LIGHT COMPANY
v.
CONSOLIDATED RAIL CORPORATION, *ET AL.*

Decided: May 9, 1997

We are denying the petition of Consolidated Rail Corporation (Conrail) to order Pennsylvania Power and Light Company (PP&L) to show cause why this proceeding should not be held in abeyance.

BACKGROUND

By complaint filed August 4, 1994, as amended on September 20, 1995, PP&L seeks the establishment of reasonable through rates for future unit train movements of coal traffic. The coal traffic would (a) originate at origins served by defendant CSX Transportation, Inc. (CSXT) or defendant Norfolk Southern Corporation (NS), (b) interchange from CSXT to defendant Conrail at Lurgan, PA, and from NS to Conrail at Hagerstown, MD, and (c) move via Conrail to destination generating stations owned by PP&L, which are currently served only by Conrail.

In STB Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/ Agreements--Conrail, Inc., and Consolidated Rail Corporation*, NS and CSXT are preparing to submit for our approval a series of transactions by which NS and CSXT will divide Conrail's rail lines between them.²

By motion filed April 18, 1997, Conrail requests that we order PP&L to show cause why this proceeding should not be held in abeyance pending a final order by the Board in STB Finance Docket No. 33388. NS and CSXT state that they take no position on Conrail's motion. In its reply filed April 25, 1997, PP&L opposes Conrail's motion.

DISCUSSION AND CONCLUSION

Conrail asserts that the parties to STB Finance Docket No. 33388 have agreed that NS will operate the Conrail track in question that presently serves PP&L's plants and that NS has essentially reached a settlement with PP&L. According to Conrail, PP&L should be required to show cause why the asserted settlement does not require that this proceeding be held in abeyance pending issuance of a decision in STB Finance Docket No. 33388.

We find that we are capable of proceeding with this case as it is currently filed and that our failure to do so would unduly prejudice the rights of PP&L. As argued by PP&L (see pages 6-7 of

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred certain functions to the Surface Transportation Board (Board), effective January 1, 1996. Under section 204(b)(1) of the ICCTA, proceedings that were pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Board. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to new 49 U.S.C. 10701.

² See our prefiling notice served April 21, 1997.

its reply), the nature and extent of the transactions proposed in STB Finance Docket No. 33388, as well as the outcome of any regulatory proceeding for the approval of the transactions, are far from definite. For that reason, and because PP&L disputes Conrail's assertion that a settlement has been reached, we will not hold this proceeding in abeyance as to NS/Conrail service.

Moreover, the rate relief sought in this proceeding pertains to origins served by CSXT as well as NS. Neither party maintains that the relief sought involving CSXT origins would be affected by the transactions that will be proposed in STB Finance Docket No. 33388, or by the purported settlement between PP&L and NS. Thus, there is no reason to hold this proceeding in abeyance as to CSXT/Conrail service.

If a settlement between PP&L and any of the parties to this proceeding is finalized, the parties may return to the Board at that time and move for partial or complete dismissal of this proceeding, as appropriate. Pending submission of such a motion, however, PP&L would be unfairly disadvantaged if this proceeding were held in abeyance.

It is ordered:

1. Conrail's petition for a show cause order is denied, and we will not hold this proceeding in abeyance.
2. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary